IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 565 OF 2003

IN

SECOND APPEAL NO. 40 OF 2002

KISHORI S. GAITONDE AND ANR., ...Applicants

Versus

SHRI LAXMAN G. GAONKAR AND 4 ORS., ...Respondents

Miss. Pooja Bharne, Advocate for the applicants.

Mr. S. Chopdekar, Advocate for respondents No. 2 to 5.

Coram:- P.V. KAKADE, J.

Date:- 18th September, 2006

P.C.

Heard Advocates for the applicants as well as respondents Nos.2 to 5. The names of legal heirs, namely respondents No.1(a) and 1(b) of the deceased respondent No.1 are already deleted.

2. This is an application to condone the delay in filing the application for bringing the legal heirs of deceased respondent No.1 on record. The delay appears to be of 7 years, 8 months and two days in filing the application. The application reveals that the notice sought to be served on respondent No.1 had returned unserved since the respondent had expired. The applicants state that respondent no.1 had expired on 31.1.1996 during the pendency of Regular Civil Appeal No.63/1994. It is further contended that respondent No.1 had expired during the pendency of the said appeal. However, upon the death of appellant No.1 therein, i.e. the present respondent No.1, the legal heirs of the appellant

No.1 therein were not brought on record and the Judgment and Decree came to be passed without bringing the LRs. of the appellant No.1 on record. According to the applicants, they had no knowledge whatsoever about the death of respondent No.1 since the legal heirs of respondent No.1 were not brought on record in the said appeal though the respondent No.1 had expired during the pendency of the appeal and the applicants had no knowledge of the death of respondent No.1 until the time when the notice of this Court came back unserved with necessary endorsement.

3. Respondents No.2 to 5 do not raise any specific objection for condonation of delay. In view of the facts and circusmtances, I hold that the ground mentioned is sufficient cause to condone the delay on certain condition. Hence, the application is made absolute in terms of prayer clause (a) on condition that an amount of Rs.500/- shall be donated by the applicants to the State Legal Services Authority within two weeks from today. With this direction, the application stands disposed of with no order as to costs

P.V. KAKADE, J.

ssm.